



DONALD HEEMAN
DIRECT DIAL: 612-268-7005
dheeman@spencerfane.com

February 19, 2019

VIA ECF

The Honorable Hildy Bowbeer, U.S.M.J.
United States District Court
734 Federal Building
316 N. Robert Street
St. Paul, MN 55101
Bowbeer_chambers@mnd.uscourts.gov

Re: *In re EpiPen ERISA Litigation*, Case No. 17-cv-01884 (PAM-HB)

Dear Judge Bowbeer,

In accordance with the Court's Order Regarding Case Management Conferences (ECF No. 333), we write on behalf of all Defendants to address the items on the parties' Proposed Joint Agenda (ECF No. 349) for the Case Management Conference on February 21, 2019.

As it stands, the Parties have no ripe disputes regarding any agenda items.

1. Status of Discovery

a. Plaintiffs' Requests to Defendants

i. Status of Defendants' production to date

During the conference, the Parties will discuss the status of Defendants' document production to date, including the volume of documents produced. Plaintiffs served their first set of requests for production on each Defendant on December 7, 2018. In accordance with an agreement by the Parties, each Defendant timely served its objections and responses on January 11, 2019. On February 7, 2019, Plaintiffs served letters on each Defendant raising issues with the objections and responses, and the Parties have since been meeting and conferring about these issues. As of February 19, 2019, each Defendant has had one or two meet and confers with Plaintiffs, and the meet and confers are ongoing as the Parties attempt to work through the issues cooperatively.

The Honorable Hildy Bowbeer, U.S.M.J.

February 19, 2019

Page 2

ii. Meet and Confer Status

1. Document Requests and Interrogatories

Document Requests: As detailed above, each Defendant is currently meeting and conferring with Plaintiffs on issues that Plaintiffs raised about Defendants' objections and responses to Plaintiffs' first set of requests for production.

Interrogatories: Plaintiffs served their first set of interrogatories on each Defendant on December 7, 2018. Each Defendant timely served its objections and responses on January 18, 2019.

Plaintiffs have not raised any issues with the objections and responses served by the Express Scripts and Prime Defendants in response to the Plaintiffs' first set of interrogatories.

On February 13, Plaintiffs sent a letter to the CVS Caremark Defendants raising certain issues with their responses to Plaintiffs' First Set of Interrogatories. On February 15, Plaintiffs sent a letter to the Optum and United Defendants raising certain issues with their responses to Plaintiffs' First Set of Interrogatories. The Parties will meet and confer over those issues soon.

2. Search Terms, Custodians, and ESI Sources

Each Defendant served Plaintiffs with its proposed list of custodians on January 18, 2019, and with a proposed set of search terms on January 25, 2019. In late January, each Defendant also had a meet and confer with Plaintiffs regarding ESI sources.

In their letters of February 7, 2019, Plaintiffs requested additional custodians from each Defendant and also further addressed the issue of ESI sources. On February 10, 2019, Plaintiffs served a counterproposal on search terms.

The ongoing meet and confers between Plaintiffs and Defendants are covering the issues of custodians, search terms, and ESI sources.

3. Disputes that may require Court intervention: Objections, Scope, Time Period

In their meet and confers, Plaintiffs and Defendants have not yet reached agreement on the permissible scope of the requests for productions, the validity of Defendants' objections, or the relevant time period for discovery. They are continuing to meet and confer on these issues and will continue to report on the status of their meet and confers and, if necessary, will notify the Court if a ripe dispute emerges.

The Honorable Hildy Bowbeer, U.S.M.J.

February 19, 2019

Page 3

b. Plaintiffs' Requests to Third Parties

i. Mylan

1. Search Terms and Custodians Agreement

Defendants anticipate that Plaintiffs will provide an update to the Court on the agreement reached between Mylan and Plaintiffs about Mylan's response to Plaintiffs' subpoenas.

2. Status of Mylan's production to date

Defendants anticipate that Plaintiffs will provide an update to the Court on the status of Mylan's production in response to Plaintiffs' subpoenas. Mylan made its first production of documents in response to Plaintiffs' subpoenas on February 15, 2019.

3. Disputes that may require Court intervention: Production Schedule / Delay for relevancy review following application of negotiated search terms

Defendants do not take any position on Plaintiffs' potential disputes with Mylan, should Plaintiffs identify any at the conference with the Court.

c. Defendants' Requests to Plaintiffs

i. Prime's Requests to named Plaintiffs Adam and Elan Klein

On January 23, 2019, Prime served document requests and interrogatories on named Plaintiffs Adam and Elan Klein. Plaintiffs' responses are currently due on February 22, 2019. On February 19, 2019, Plaintiffs requested a short extension on those responses until March 1, 2019, which Prime is considering.

ii. Defendants' Common Requests to All Plaintiffs

In addition, on February 18, 2019, Defendants served on Plaintiffs their first set of common requests for production. Plaintiffs' responses are due on March 20, 2019.

d. Defendants' Requests to Third Parties

i. Mylan

On November 16, 2018, Defendants served Mylan with a letter outlining the topics on which it would likely seek documents via subpoena. On January 15, 2019, Defendants served Mylan with a subpoena for documents. Mylan provided a written proposal regarding its proposed response to Defendants' subpoena on February 14, 2019.

The Honorable Hildy Bowbeer, U.S.M.J.

February 19, 2019

Page 4

Defendants are presently meeting and conferring with Mylan concerning Mylan's responses to Defendants' subpoena for documents to Mylan. Defendants will provide the Court with an update of those meet and confers. There are no ripe disputes regarding this agenda item.

ii. Prime's Requests to Blue Sea Capital LLC and TriNet Group, Inc.

Defendant Prime has issued subpoenas to certain third parties that have relevant information about Plaintiffs Adam and Elan Klein. On December 20, 2018, Prime served a subpoena for documents on Blue Sea Capital, LLC ("Blue Sea"), to which Blue Sea responded and produced documents on February 1, 2019. On January 11, 2019, Prime served a subpoena for documents on TriNet Group, Inc. ("TriNet"). TriNet produced documents on February 8, 2019. Prime is considering the sufficiency of the responses and productions by both third parties. In response to a request from Plaintiffs' counsel, the Blue Sea and TriNet productions were provided to Plaintiffs on February 19, 2019.

2. Mediation

a. Mediator selection complete – Hon. Jeffrey Keyes

Judge Jeffrey Keyes has agreed to serve as the mediator for this case. The Parties will provide an update on their communications with Judge Keyes.

b. Scheduling mediation for late April 2019

The Parties have scheduled a mediation session for April 29–30, 2019.

Respectfully submitted,

/s/ Donald Heeman

Donald Heeman

DGH/sjbg

cc: All parties of record via ECF